

customers' requests, Universal Telecom sent orders to ALLTEL requesting that the customers' telephone numbers be ported from EZ Phone to Universal Telecom.

9. Initially, in compliance with the interconnection agreement, ALLTEL processed these orders, although it did not do so in a timely manner. When Universal Telecom called to complain about the amount of time it was taking to process the orders, Universal Telecom was informed by Tammy Seifert, an employee of ALLTEL, that it would no longer process the orders until Universal Telecom provided ALLTEL with a twelve thousand dollar deposit (\$12,000.00). The request for the security deposit was made verbally only, therefore it did not comply with the terms of the parties' interconnection agreement.

10. Nonetheless, Universal Telecom is in the process of securing a surety bond to provide ALLTEL with the requested twelve thousand dollar (\$12,000.00) security deposit. Universal Telecom estimates that it will take approximately five (5) business days to obtain the surety bond.

11. In the meantime, however, ALLTEL has ceased processing *all* active service orders from Universal Telecom. Therefore, when ALLTEL receives a disconnect order from a former EZ Phone customer, for example, ALLTEL will process the disconnect order, but it will not process the order to port the number to Universal Telecom. In fact, ALLTEL refuses to process *any* active service order with regard to *any* Universal Telecom customer. ALLTEL's actions are a thinly disguised effort to take customers from Universal Telecom in a blatant abuse of its monopoly power.

Upon the basis of its complaint, and otherwise, Universal Telecom hereby moves the Commission to enter an order requiring ALLTEL to immediately start processing all orders placed by Universal Telecom. As additional grounds for this motion, Universal Telecom states as follows.

1. Universal Telecom has contacted the attorney for ALLTEL about this situation and its immediate need for ALLTEL to start processing Universal Telecom's active service orders. (*See Exhibit B*).

2. Universal Telecom cannot provide service to any new customers or implement service changes requested by current customers so long as ALLTEL refuses to process its active service orders.

3. ALLTEL should be required to process Universal Telecom's active service orders because the failure to do so would: (a) irreparably injure Universal Telecom's reputation in its service territory as a quality provider of local exchange carrier service; and (b) seriously undermine the public interest by preventing Universal Telecom's customers from receiving utility services. *See Maupin v. Stansbury, Ky.App.*, 575 S.W.2d 695 (1978):

Therefore, in light of the above discussion, applications for temporary injunctive relief should be viewed on three levels. First, the trial court should determine whether plaintiff has complied with CR 65.04 by showing irreparable injury. This is a mandatory prerequisite to the issuance of any injunction. Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been presented. If the party requesting relief has shown a probability of irreparable injury, presented a substantial question as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded. However, the actual overall merits of the case are not to be addressed in CR 65.04 motions. Unless a trial court has abused its discretion in applying the above standards, we will not set aside its decision on a CR 65.07 review.

Supra, at 5. *See, also, Commonwealth Revenue Cabinet v. Pickelmaster*, Sup.Ct., 879 S.W.2d 482, 484 (1994).

4. Moreover, Universal Telecom's complaint presents the Commission with a substantial question or questions. Specifically, at numerical paragraphs 9, 11 and 12 of its complaint Universal Telecom alleges the following substantial questions.

9. When Universal Telecom called to complain about the amount of time it was taking to process the orders, Universal Telecom was informed by Tammy Seifert, an employee of ALLTEL, that it would no longer process the orders until Universal Telecom provided ALLTEL with a twelve thousand dollar deposit (\$12,000.00). The request for the security deposit was made verbally only, therefore it did not comply with the terms of the parties' interconnection agreement.

11. In the meantime, however, ALLTEL has ceased processing *all* active service orders from Universal Telecom. Therefore, when ALLTEL receives a disconnect order from a former EZ Phone customer, for example, ALLTEL will process the disconnect order, but it will not process the order to port the number to Universal Telecom. In fact, ALLTEL refuses to process *any* active service order with regard to *any* Universal Telecom customer. ALLTEL's actions are a thinly disguised effort to take customers from Universal Telecom in a blatant abuse of its monopoly power.

12. Moreover, ALLTEL has instructed its affiliates in every state in which ALLTEL does business with Universal Telecom to cease processing any and all active service orders from Universal Telecom.

5. Universal Telecom needs ALLTEL to immediately start processing its active service orders because it is losing customers due to ALLTEL's actions.

6. There is no reason not to order ALLTEL to immediately start processing Universal Telecom's orders because: (i) the public interest demands it; (ii) the failure to do so would result in irreparable injury to Universal Telecom's reputation; and (iii) Universal Telecom's complaint presents a substantial question or questions.

Therefore, Universal Telecom respectfully requests that its motion for immediate relief and for a hearing be **GRANTED**, that the Commission schedule a hearing for today, October 8, 2004, or as soon thereafter as possible, and that ALLTEL be ordered to immediately process Universal Telecom's active service orders.

Respectfully submitted,



John E. Selent
Holly C. Wallace
DINSMORE & SHOHL LLP
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500 W. Jefferson Street
Louisville, KY 40202
(502) 540-2300 (Phone)
(502) 585-2207 (Fax)
john.selent@dinslaw.com (E-mail)

**COUNSEL TO UNIVERSAL
TELECOM, INC.**

CERTIFICATE OF SERVICE

It is hereby serviced that a true and accurate copy of the foregoing was served, via First Class United States mail, this 8th day of October, 2004 to the following:

Stephen B. Rowell, Esq.
ALLTEL Communications, Inc.
One Allied Drive
P. O. Box 2177
Little Rock, AR 72202
(served via fax and mail)

General Counsel
Kentucky ALLTEL, Inc.
PO Box 1650
Lexington, KY 40588-1650



**COUNSEL TO UNIVERSAL
TELECOM, INC.**

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

UNIVERSAL TELECOM, INC.)	
)	
Complainant)	
)	
v.)	Case No. _____
)	
KENTUCKY ALLTEL, INC.)	
)	
Defendant)	
_____)	

FORMAL VERIFIED COMPLAINT

Complainant, Universal Telecom, Inc. (“Universal Telecom”), by counsel, for its Complaint pursuant to KRS 278.260 against Kentucky ALLTEL, Inc. (“ALLTEL”) states as follows.

INTRODUCTION

1. The full name and address of Universal Telecom is Universal Telecom, Inc., P.O. Box 679, LaGrange, KY 40031. Universal Telecom is a competitive local exchange carrier (“CLEC”) offering pre-paid local exchange service within ALLTEL’s territory in the Commonwealth of Kentucky.

2. The full name of ALLTEL is Kentucky ALLTEL, Inc., One Allied Drive, Little Rock, AK 72202. Kentucky ALTEL is a local exchange carrier providing local exchange service within the Commonwealth of Kentucky.

3. The facts supporting this case are set forth more fully below; but briefly, this complaint concerns ALLTEL’s refusal to process any active service orders from Universal Telecom. ALLTEL’s actions are resulting in immediate, substantial and irreparable harm to

Universal Telecom's business competitiveness and business reputation. Accordingly, Universal Telecom seeks immediate relief from the Kentucky Public Service Commission (the "Commission").

APPLICABLE LAW

4. Pursuant to KRS 278.170, "[n]o utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage"

5. Pursuant to KRS 278.040, the Commission has jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth.

6. Pursuant to KRS 278.260, the Commission is vested with the express authority to investigate and remedy "complaints as to rates or service of any utility."

STATEMENT OF THE FACTS

7. Within the last week, Universal Telecom has begun to serve hundreds of former customers of EZ Phone, Inc. ("EZ Phone") a local exchange carrier that no longer provides local exchange service within the Commonwealth of Kentucky.

8. In accordance with the interconnection agreement between Universal Telecom and ALLTEL, and pursuant to the customers' requests, Universal Telecom sent orders to ALLTEL requesting that the customers' telephone numbers be ported from EZ Phone to Universal Telecom.

9. Initially, in compliance with the interconnection agreement, ALLTEL processed these orders, although it did not do so in a timely manner. When Universal Telecom called to complain about the amount of time it was taking to process the orders, Universal Telecom was informed by Tammy Seifert, an employee of ALLTEL, that it would no longer process the orders

until Universal Telecom provided ALLTEL with a twelve thousand dollar deposit (\$12,000.00). The request for the security deposit was made verbally only, therefore it did not comply with the terms of the parties' interconnection agreement.

10. Nonetheless, Universal Telecom is in the process of securing a surety bond to provide ALLTEL with the requested twelve thousand dollar (\$12,000.00) security deposit. Universal Telecom estimates that it will take approximately five (5) business days to obtain the surety bond.

11. In the meantime, however, ALLTEL has ceased processing *all* active service orders from Universal Telecom. Therefore, when ALLTEL receives a disconnect order from a former EZ Phone customer, for example, ALLTEL will process the disconnect order, but it will not process the order to port the number to Universal Telecom. In fact, ALLTEL refuses to process *any* active service order with regard to *any* Universal Telecom customer. ALLTEL's actions are a thinly disguised effort to take customers from Universal Telecom in a blatant abuse of its monopoly power.

12. Moreover, ALLTEL has instructed its affiliates in every state in which ALLTEL does business with Universal Telecom to cease processing any and all active service orders from Universal Telecom.

13. As a result of ALLTEL's actions, Universal has already suffered substantial and irreparable damage to its business competitiveness and its business reputation. In addition, said damage to Universal Telecom increases with each passing hour that ALLTEL refuses to process Universal Telecom's orders.

WHEREFORE, Universal Telecom respectfully requests that the Commission:

- A. Order ALLTEL to immediately begin to process all orders submitted by Universal Telecom;
- B. Order ALLTEL to process Universal Telecom's orders in a timely manner;
- C. Order ALLTEL to instruct its affiliates in states in which they do business with Universal Telecom to immediately begin to process all of Universal Telecom's orders in a timely manner;
- D. Grant Universal Telecom any and all such other legal and equitable relief to which it is entitled;
- E. Grant Universal Telecom an emergency hearing regarding the matters stated herein.

Respectfully submitted,



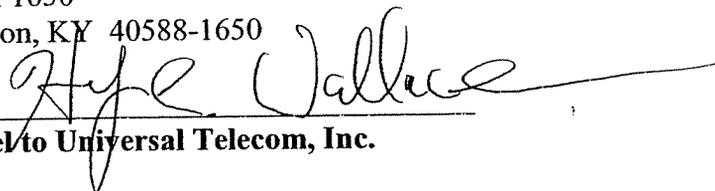
John E. Selent
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 1400 PNC Plaza
 500 W. Jefferson Street
 Louisville, KY 40202
 (502) 540-2300 (Phone)
 (502) 585-2207 (Fax)
COUNSEL TO UNIVERSAL TELECOM, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing Formal Verified Complaint was served via fax and first-class United States mail, sufficient postage prepaid, this  day of October, 2004, upon the following:

Stephen B. Rowell, Esq.
 ALLTEL Communications, Inc.
 One Allied Drive
 P. O. Box 2177
 Little Rock, AR 72202

General Counsel
 Kentucky AllTel, Inc.
 PO Box 1650
 Lexington, KY 40588-1650



Counsel to Universal Telecom, Inc.

John E. Selent
502-540-2315
john.selent@dinslaw.com

October 8, 2004

Via Fax: (501) 905-4443

Stephen B. Rowell, Esq.
ALLTEL Communications, Inc.
One Allied Drive
P. O. Box 2177
Little Rock, AR 72202

Re: Universal Telecom, Inc.

Dear Mr. Rowell:

We are legal counsel to Universal Telecom, Inc. ("Universal Telecom") a competitive local exchange carrier doing business in Kentucky, Georgia, and other states in which ALLTEL provides incumbent local exchange carrier services.

A most serious issue has arisen between Universal Telecom and ALLTEL. Universal Telecom has attempted to resolve this issue through its contacts at ALLTEL, and specifically, an employee at ALLTEL by the name of Tammy Siefert, who, I believe, is located in Atlanta.

The problem is this. Universal Telecom has been doing business with ALLTEL for a number of years. In the course of that business, Universal Telecom has, in the last week or so, requested ALLTEL to port numbers from a competitive local exchange carrier who has stopped doing business in the Commonwealth of Kentucky. With the authorization of these competitive local exchange carrier's former customers, Universal Telecom has requested ALLTEL to port these numbers. ALLTEL did not port these numbers on a timely basis. (ALLTEL was, however, disconnecting these numbers promptly.) When Universal Telecom called repeatedly to complain about the delay, ALLTEL explained that it was simply inundated with requests to port and that it was unable to timely fulfill these orders. Universal Telecom continued to call and complain. Finally, ALLTEL advised Universal Telecom that it would no longer port any numbers for Universal Telecom, and that it would not comply with any active customer service

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orders from Universal Telecom. In the meantime, ALLTEL was continuing to disconnect the customers of the CLEC which is no longer doing business in the Commonwealth of Kentucky.

In a call which Universal Telecom initiated, and which has not been confirmed in writing, ALLTEL indicated that it will not port any numbers until it receives a \$12,000 deposit from Universal Telecom. At first, ALLTEL would not even tell Universal Telecom the amount of the deposit that was required. Universal Telecom requested during the pendency of the posting of the bond, that ALLTEL continue to timely port numbers for Universal Telecom. ALLTEL refused.

Universal Telecom is in the process of obtaining a satisfactory \$12,000 bond and should have that bond in place within five (5) or so business days. Universal Telecom has requested ALLTEL to continue to port numbers and to otherwise comply with active customer service orders issued by Universal Telecom to ALLTEL.

ALLTEL has refused to do so.

I would ask that ALLTEL begin immediately to timely comply with Universal Telecom's requests for porting, and all other active customer service orders from Universal Telecom.

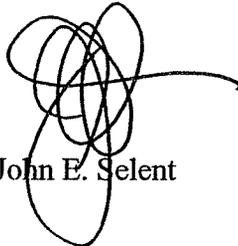
This situation must be resolved immediately or, we must file, as soon as possible, a complaint with the Public Service Commission of the Commonwealth of Kentucky requesting an immediate hearing and immediate relief. ALLTEL actions are substantially and irreparably damaging Universal Telecom's reputation as a reliable provider of competitive local exchange carrier services and ALLTEL's action have caused Universal Telecom monetary damages. Moreover, ALLTEL's actions are an abuse of its monopoly power as an incumbent local exchange carrier and are violative of its interconnection agreement with Universal Telecom, the Telecommunications Act of 1996, KRS Chapter 278, orders of the Public Service Commission, and applicable trade regulations and antitrust laws.

I trust that ALLETL will immediately begin porting numbers as requested by Universal Telecom, both in Kentucky and elsewhere, and that ALLTEL will otherwise comply with all active customer service orders issued by Universal Telecom to ALLTEL. Please confirm in writing, as soon as possible, that ALLEL will begin doing so at once. And Universal Telecom will have the \$12,000 bond in place within five (5) or so business days.

Thank you, and I hope that we will be able to avoid administrative intervention in this matter.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John E. Selent

JES/bmt

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